

## Internal Revenue Service

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### Legend

Corp A =

Corp B =

Entity D =

Entity E =

Corp F =

Corp G =

Country X =

Individual =

N

Individual =

O

Firm P =

Treaty =

Tax Year =

1

Date 4 =

Z percent =

Dear :

This is in response to a letter dated April 4, 2007, in which Corp A requests an extension of time under Treas. Reg. §301.9100-3 to file the election described in section

865(h)(2)(A) of the Internal Revenue Code to treat gain from the sale of stock in two Country X companies as foreign source income. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Corp A is the successor-in-interest to Corp B. During Tax Year 1, Corp B owned 100 percent of Entity D. Entity D owned 100 percent of Entity E. Both Entity D and Entity E had previously elected to be treated as disregarded entities for United States federal tax purposes.

During Tax Year 1, Entity E owned 100 percent of the shares of Corp F and Z percent of the shares of Corp G. Corp F and Corp G are Country X corporations.

During Tax Year 1, Entity E sold, in two separate transactions, all of its interests in Corp F and Corp G to unrelated third parties. Entity E realized gain from the sales in Tax Year 1 and distributed the proceeds to Corp B, through Entity D, in Tax Year 1. Corp B reported the gain from the two sales on its United States federal tax return for Tax Year 1.

On Date 4, Individual O, a partner at Firm P, determined that section 865(h) of the Code should apply to the gains realized on the sales of the stock of Corp F and Corp G and that an election under section 865(h)(2)(A) to source the gains outside of the United States could have been made by Corp B but that the time to file the election had expired. In an affidavit from Individual N, the Vice President for Taxes for Corp B, Individual N indicated that at the time Corp B's Tax Year 1 income tax returns were prepared, neither he nor any member of the tax department was aware of section 865(h)(2), but that if they had been aware of this section, an election under section 865(h)(2), which would have allowed Corp B to source the gain from the above described stock sales as foreign, would have been made.

Once Corp B was informed by Firm P of the potential to make a section 865(h)(2)(A) election, Corp B initiated this request for relief under Treas. Reg. §301.9100-3 for an extension of time to file this election.

Under section 865(a) of the Code, except as otherwise provided, income from the sale of personal property by a United States resident shall be sourced in the United States. Section 865(h)(2)(A) provides, in part, for foreign source treatment of gain (i) which is from the sale of stock in a foreign corporation and which would otherwise be sourced in the United States under this section; (ii) which, under a treaty obligation of the United States (applied without regard to this section) would be sourced outside of the United

States; and (iii) with respect to which the taxpayer chooses the benefits of this subsection. Section 865(h)(1)(B) provides that section 904(a), (b), and (c), and sections 902, 907, and 960 will apply separately to gain that is sourced outside the United States under this section. Corp A represents that, under the Treaty, its gain on the stock sales would have been sourced outside the United States.

Treas. Reg. §301.9100-8(a)(2) and (3) sets forth the time and manner of how to make the election under section 865(h)(2).

Treas. Reg. §301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. §301.9100-1(c) provides that the Commissioner has discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. §301.9100-3, to make a regulatory election under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Treas. Reg. §301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, the election described in Treas. Reg. §301.9100-8(a)(1) with respect to section 865(h)(2) is a regulatory election as defined in Treas. Reg. §301.9100-1(b). Therefore, the Commissioner has the discretionary authority under Treas. Reg. §301.9100-1(c) to grant an extension of time, provided that the taxpayer satisfies the rules set forth in Treas. Reg. §301.9100-3(a).

Based upon the facts and circumstances submitted, we conclude that Corp A satisfies Treas. Reg. §301.9100-3(a). Accordingly, Corp A, as successor-in-interest to Corp B, is granted an extension of time of 60 days from the date of this ruling letter to file the election described in Treas. Reg. §301.9100-8(a)(1) with respect to section 865(h)(2) for Tax Year 1 to treat gain from the sale of the stock of Corp F and Corp G as sourced outside of the United States.

The granting of an extension of time is not a determination that Corp A is otherwise eligible to file the election in question. See Treas. Reg. §301.9100-1(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in

this letter. No opinion is expressed or implied concerning the application of any provision of any income tax treaty to which the United States is a party.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Ginny Y. Chung  
Assistant to the Branch Chief, Branch 3  
Office of the Associate Chief Counsel  
(International)